

Attorney's Docket No.: 10559-858001
Client's Ref. No.: P17306

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Number of pages including this page 5

Applicant: Ronald Kuse
Serial No.: 10/663,366
Filed: September 15, 2003

Art Unit: 1763
Examiner: Richard R. Bucker

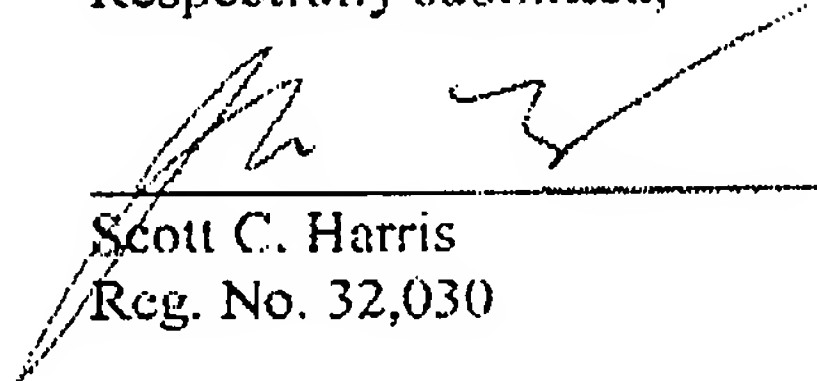
Title: Precursor Delivery System

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

A Response to Election of Species Requirement Dated July 5, 2006 is attached.

Respectfully submitted,

Date: July 5, 2006



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Attorney's Docket No.: 10559/858001 / P17306
Intel Corporation

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronald Kuse Art Unit: 1763
Serial No.: 10/663,366 Examiner: Richard R. Bueker
Filed: September 15, 2003 Assignee: Intel Corporation
Title: PRECURSOR DELIVERY SYSTEM

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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RESPONSE TO ELECTION OF SPECIES REQUIREMENT

In response to the Election of Species Requirement mailed April 5, 2006, applicant hereby traverses the requirement and provisionally elects the species where the pressure controller comprises a gas source should the Election of Species Requirement be made final. Claims 1-6, 15, 23, 24 and 30 are generic. Claims 9, 10, and 27 are specific to the elected species.

CERTIFICATE OF TRANSMISSION BY FACSIMILE

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July 5, 2006
Date of Transmission


Signature

Julie H. Giordano
Typed or Printed Name of Person Signing Certificate

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Applicant traverses the Election of Species Requirement because it is inconsistent with 37 C.F.R. § 1.146, which sets forth the USPTO's rules for making election of species requirements. In particular, 37 C.F.R. § 1.146 states:

"In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application." (emphasis added).

This is the second Election of Species Requirement issued in this application. Accordingly, the first sentence of 37 C.F.R. § 1.146, which allows an Examiner to require election of a species from among "more than one patentably distinct species" in a first action, is inapplicable.

The second sentence of 37 C.F.R. § 1.146 thus remains, which allows an Examiner to require election of a species when an application contains "claims directed to more than a reasonable number of species." In the present situation, election is required from among two patentably distinct species.

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Applicant respectfully submits that two patentably distinct species cannot reasonably be interpreted to constitute "more than a reasonable number of species." In particular, such an interpretation would mean that "more than one" patentably distinct species is "more than a reasonable number" of patentably distinct species. An election of species would thus be allowed under identical circumstances (i.e., with only two patentably distinct species) under both the first sentence and the second sentence of 37 C.F.R. § 1.146. This interpretation is thus inconsistent with the presence of two sentences in 37 C.F.R. § 1.146 that relate to Election of Species in two distinct circumstances.

Accordingly, the present requirement for an election of species is inconsistent with 37 C.F.R. § 1.146 and hence improper. Applicant respectfully requests that the requirement for an election of species be withdrawn.

Finally, the Office Action Summary included with the Election of Species Requirement mailed April 5, 2006 identified that applicant had a period for reply of three months. The three month period for reply is not contradicted by other statements elsewhere in the Election of Species Requirement.

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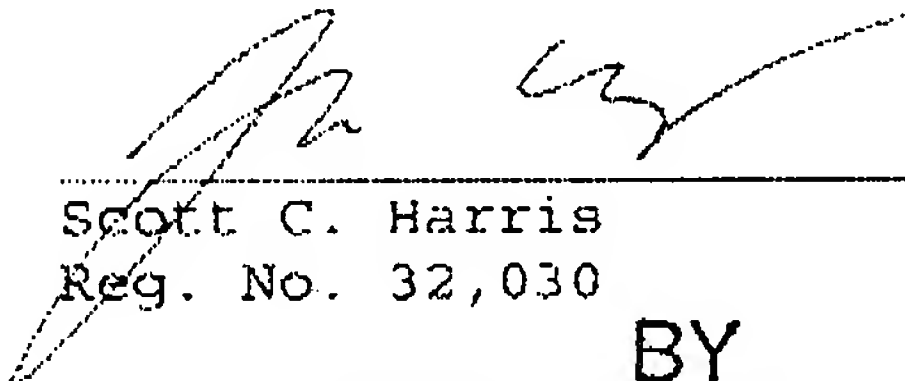
Upon receipt of the Election of Species Requirement, Applicant's staff had docketed a reply based on the three month period and the present paper is submitted within that period. Thus, no fees are believed due at this time. If the Office Action Summary was in error, and a response was due within another period, Applicant hereby petitions for a two-month extension of time under 37 C.F.R. § 1.136 and asks that the Office apply the accompanying fee, along with any other applicable charges or credits, to Deposit Account No. 06-1050.

Respectfully submitted,

Date: July 5, 2006

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